



Virginia
Regulatory
Town Hall

Periodic Review and Retention of Existing Regulations Agency Background Document

Agency Name:	Department of Social Services
VAC Chapter Number:	22 VAC 40-100-10 et. seq.
Regulation Title:	<i>Minimum Standards for Licensed Child-Caring Institutions</i>
Action Title:	Periodic Review
Date:	October 16, 2001

This information is required pursuant to the Administrative Process Act § 9-6.14:25 (after October 1, 2001 § 2.2-4017) Executive Order Twenty-Five (98), and Executive Order Fifty-Eight (99) which outline procedures for periodic review of regulations of agencies within the executive branch. Each existing regulation is to be reviewed at least once every three years and measured against the specific public health, safety, and welfare goals assigned by agencies during the promulgation process.

This form should be used where the agency is planning to retain an existing regulation.

Summary

Please provide a brief summary of the regulation. There is no need to state each provision; instead give a general description of the regulation and alert the reader to its subject matter and intent.

This regulation applies to the six remaining private child-caring institutions, that do not take public funds for the children placed there. These facilities accept children directly placed by their parents and are permitted to do so by § 63.1-204 of the *Code of Virginia*. The regulation sets forth the minimum requirements for licensure of these facilities. The 1987 General Assembly passed a law (§64.1-196.4, paragraph two) that freezes the regulation in effect on that date for the child-caring institutions licensed under them at that time. New applicants for licensure as child-caring institutions are required to be licensed under the *Interdepartmental Standards for the Regulation of Children's Residential Facilities*.

Basis

Please identify the state and/or federal source of legal authority for the regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. Where applicable, explain where the regulation exceeds the minimum requirements of the state and/or federal mandate.

Section 63.2-202 and Section 63.1-196.4 of the *Code of Virginia* give the Department authority for this mandate. This regulation does not exceed the scope of the mandate. Section 63.1-196.4 of the *Code of Virginia* does not permit the Department to revise this regulation.

Public Comment

Please summarize all public comment received as the result of the Notice of Periodic Review published in the Virginia Register and provide the agency response. Where applicable, describe critical issues or particular areas of concern in the regulation. Also please indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

The notice was published in the July 2, 2001, edition of the Virginia Register, Volume 17, Issue 21. No comments were received during the 20-day public comment period; therefore, there is no agency response. An informal advisory group was not formed.

Effectiveness

Please provide a description of the specific and measurable goals of the regulation. Detail the effectiveness of the regulation in achieving such goals and the specific reasons the agency has determined that the regulation is essential to protect the health, safety or welfare of citizens. Please assess the regulation's impact on the institution of the family and family stability. In addition, please indicate whether the regulation is clearly written and easily understandable by the individuals and entities affected.

The purpose and goals of this regulation are to establish minimum standards of care to protect children who are placed in child-caring institutions by their parents or legal guardians. The standards govern the sponsorship, organization and administration, personnel, buildings and grounds, programs, services, and record keeping requirements in these facilities.

The regulation is clear and easily understood, but some of the standards are outdated and inaccurate. There are references to Code sections which have been amended since 1987, yet the outdated Code section is included in the text of the regulation. However, the Code does not permit the Department to revise this regulation. The Department believes that all child-caring institutions should be licensed under the *Interdepartmental Standards*, which are more current and reflect the thinking of the majority of providers of the residential care of children and experts in the field of child welfare.

Alternatives

Please describe the specific alternatives for achieving the purpose of the existing regulation that have been considered as a part of the periodic review process. This description should include an explanation

of why such alternatives were rejected and this regulation reflects the least burdensome alternative available for achieving the purpose of the regulation.

This regulation has been in effect since 1972 with amendments made in 1981 and 1984. The alternative to achieving the purpose of this regulation is to require the six remaining child-caring institutions to be licensed under the *Interdepartmental Standards for the Regulation of Children's Residential Facilities*: however, this cannot be done without legislative action. The 1987 General Assembly enacted Section § 63.1-196.4, which allows child-caring institutions licensed under the *Minimum Standards for Licensed Child Caring Institutions* in effect on January 1, 1987 to remain regulated by those standards, unless they accept public funds. The only other alternative is to have no regulation of these facilities at all, which is not an acceptable alternative and not in the best interests of the children living in these facilities.

Recommendation

Please state that the agency is recommending that the regulation should stay in effect without change.

The Department recommends that the *Minimum Standards for Licensed Child Caring Institutions* remain in effect. Revisions are needed, but cannot be made without legislative action.

Family Impact Statement

Please provide an analysis of the regulation's impact on the institution of the family and family stability including the extent to which it: 1) strengthens or erodes the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourages or discourages economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthens or erodes the marital commitment; and 4) increases or decreases disposable family income.

To a minimal degree the regulation strengthens the authority and rights of parents who place their children in these facilities. Written consent for the child's placement in the institution is given by the parents and a basis of cooperation between parent and administration is required. Placement of a child is allowed without the surrender of parental rights. Visitation between parent and child is encouraged through flexible visiting hours.

The regulation has no impact on the economic self-sufficiency, self-pride or on the assumption of responsibility for oneself, one's spouse, and one's children. It has no impact on marital commitment or on disposable family income.